



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 18, 1998

Ms. Barbara E. Roberts
City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR98-2752

Dear Ms. Roberts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119627.

The City of Galveston (the "City") received two requests to make available for inspection certain applications for employment submitted to the City. You indicate that you have supplied information to one of the requestors, and that this requestor does not seek additional information. You contend that certain information contained in the requested applications is excepted from disclosure pursuant to section 552.101 of the Government Code. You have supplied a representative sample of the responsive documents with the information you seek to withhold highlighted.¹ We have considered the exception you raise and the subject information.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. The information submitted for our review contains references to social security numbers. Federal law may prohibit disclosure of the social security numbers included in this request for records. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act,

¹ In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

§ 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the city should ensure that the information is not confidential under this federal statute.

Information may also be withheld under section 552.101 if it is protected by constitutional or common law rights of privacy. Constitutional privacy protects two related interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 478 at 4 (1987). The first interest applies to the traditional "zones of privacy," *i.e.*, marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 at 4 (1986). While the second interest is somewhat broader, it protects only information that concerns the "most intimate aspects of human affairs." See Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). The records at issue do not fall within the "zones of privacy," nor do they concern the "most intimate aspects of human affairs."


The common-law affords more privacy protection than that afforded constitutionally; however, the Texas Supreme Court has ruled that information may be excepted from public disclosure by common law privacy if and only if the information is "highly intimate or embarrassing and it is of no legitimate concern to the public." *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

You assert that the criminal history information supplied by applicants is protected from subsequent disclosure by the privacy interests of the individuals. We disagree. The privacy implications of the release of criminal records has been addressed by the courts, which have held that "where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy." *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. See Open Records Decision Nos. 616 (1993), 565 (1990). However, in the instant case, the misdemeanor and felony conviction information at issue is not compiled by a governmental entity. Rather it is supplied by applicants. Thus, it does not take on a nature that implicates the privacy interests articulated in the *Reporters Committee* decision. We conclude that none of the information you seek to except from disclosure is protected by common-law or constitutional privacy rights.

You have raised section 552.101 of the Government code as excepting the driving records of applicants. This information is made confidential under section 552.130 of the Government Code. That section excepts from disclosure information that relates to motor vehicle operators' or drivers' licenses or permits issued by an agency of this state and motor vehicle titles or registrations issued by an agency of this state. Driver's license information (including driving records) and motor vehicle registration information (including VIN numbers) may not be released.

We have marked the subject information in light of the above analysis and are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 119627

Enclosures: Submitted documents

cc: Mr. Harold Beasley
2517 Avenue H
Galveston, Texas 77553
(w/o enclosures)